

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CESAR R. BANKS,

Plaintiff,

v.

Case No. 10-C-410

JULIE HOOPER,
and BELINDA SCHRUBBE,

Defendants.

ORDER

The plaintiff, who is incarcerated at Racine Correctional Institution, filed a pro se complaint under 42 U.S.C. § 1983, alleging that his civil rights were violated. This matter comes before the court on the plaintiff's petition to proceed in forma pauperis.

The plaintiff is required to pay the statutory filing fee of \$350.00 for this action. See 28 U.S.C. § 1915(b)(1). If a prisoner does not have the money to pay the filing fee, he can request leave to proceed in forma pauperis. The plaintiff has filed a certified copy of his prison trust account statement for the six-month period immediately preceding the filing of his complaint, as required under 28 U.S.C. § 1915(a)(2), and lacks the funds to pay an initial partial filing fee. Therefore, the plaintiff will be granted a waiver of payment of the initial partial filing fee in this case. 28 U.S.C. § 1915(b)(4).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may

be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege that: 1) he was deprived of a right secured by the Constitution or laws of the United States; and 2) the deprivation was visited upon him by a person or persons acting under color of state law. Buchanan-Moore v. County of Milwaukee, 570 F.3d 824, 827 (7th Cir. 2009); see also Gomez v. Toledo, 446 U.S. 635, 640 (1980). The court is obliged to give the plaintiff's pro se allegations, "however inartfully pleaded," a liberal construction. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)).

The plaintiff is incarcerated at Waupun Correctional Institution (WCI). He alleges that he is unable to read and suffers burning pain in his eyes because the defendants, WCI Health Services Unit Manager Belinda Schubbe and WCI Medical Program Assistant Julie Hooper, have refused to provide him with the eyeglasses prescribed for him unless he pays \$20.00, which the plaintiff is unable to do. The plaintiff seeks: a judgment declaring that the defendants have violated his Eighth Amendment rights; an injunction ordering the defendants to immediately have the plaintiff examined by a qualified eye doctor and then carry out the orders of that eye doctor; and compensatory and punitive damages.

The plaintiff may proceed on a claim that the defendants violated his Eighth Amendment rights by acting with deliberate indifference to his serious medical need. See Koel v. Dalsheim, 85 F.3d 86 (2nd Cir. 1996) (holding that depriving prisoner of eyeglasses could constitute infliction of suffering in violation of the Eighth Amendment). Defendants are directed to respond to plaintiff's motion for a temporary restraining order and preliminary injunction.

For the reasons stated,

IT IS THEREFORE ORDERED that plaintiff's motion for leave to proceed in forma pauperis (Doc. # 5) be and hereby is GRANTED.

IT IS FURTHER ORDERED that pursuant to an informal service agreement between the Attorney General and this court, copies of plaintiff's complaint and this order are being sent electronically today to the Attorney General for service on the state defendants.

IT IS FURTHER ORDERED that the defendants shall file a responsive pleading to the complaint.

IT IS FURTHER ORDERED that the defendants shall file a response to plaintiff's motion for a temporary restraining order and preliminary injunction.

IT IS FURTHER ORDERED that the Secretary of the Wisconsin Department of Corrections or his designee shall collect from the plaintiff's prison trust account the \$350 balance of the filing fee by collecting monthly payments from the plaintiff's prison trust account in an amount equal to 20% of the preceding month's income credited to the prisoner's trust account and forwarding payments to the clerk of the court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action.

IT IS FURTHER ORDERED that a copy of this order be sent to the warden of the institution where the inmate is confined.

IT IS FINALLY ORDERED that the plaintiff shall submit all correspondence and legal material to:

Honorable Lynn Adelman
% Office of the Clerk

United States District Court
Eastern District of Wisconsin
362 United States Courthouse
517 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202

PLEASE DO NOT MAIL ANYTHING DIRECTLY TO THE COURT'S CHAMBERS. It will only delay the processing of the matter.

The plaintiff is hereby notified that he is required to send a copy of every paper or document filed with the court to the opposing parties or their attorney(s). Fed. R. Civ. P. 5(a). The plaintiff should also retain a personal copy of each document. If the plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of any documents. The court may disregard any papers or documents which do not indicate that a copy has been sent to each defendant or to their attorney(s).

The plaintiff is further advised that failure to make a timely submission may result in the dismissal of this action for failure to prosecute.

In addition, the parties must notify the Clerk of Court of any change of address. Failure to do so could result in orders or other information not being timely delivered, thus affecting the legal rights of the parties.

Dated at Milwaukee, Wisconsin, this 14 day of May, 2010.

/s
LYNN ADELMAN
District Judge